IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3066 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE D.K.TRIVEDI
and
HON'BLE MR.JUSTICE SHARAD D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

NIRANJANBHAI PARBHUBHAI CHAUHAN

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 3066 of 2003

MR DR DHIMAR for Petitioner No. 1-7

GOVERNMENT PLEADER for Respondent No. 1-3

MR PRASANT G DESAI for Respondent No. 4

CORAM : HON'BLE MR.JUSTICE D.K.TRIVEDI
and
HON'BLE MR.JUSTICE SHARAD D.DAVE

Date of decision: 09/02/2004

C.A.V. JUDGEMENT

(Per : HON'BLE MR.JUSTICE SHARAD D.DAVE)

What is challenged in this petition filed under Article 226 of the Constitution of India is the impugned notices at Annexure `F' and notifications Annexure `K' and whole proceedings for acquisition of the lands of the petitioners under the notification at Annexure `K' may be quashed and set aside.

It is the case of the petitioners that father of petitioner nos. 1,2 & 3 Parbhubhai Jagabhai was owner of the immovable property situated at Surat, bearing Ward no. 2 City Survey Nondh no. 1425 admeasuring 213.21 sq.mtrs. After the death of Parbhubhai Jagabhai on 08.05.1988, the aforestated property is mutated under name of petitioner nos. 1,2 & 3 on 28.10.1996. It is averred that father of petitioner nos. 4 & 5 Jivanbhai Bhikhabhai was the owner of the immovable property situated at Surat bearing Ward no. 2, City survey Nondh no. 1446/A-1-A-2/B admeasuring 166.72 sq.mtrs. and 1446/A-1/A-1/B-2 admeasuring 123.47 sq.mtrs. After the death of Jivanbhai Bhikhabhai on 14.02.1993, the said property is mutated in the name of petitioner nos. 4 & 5. The petitioner no. 6 is the owner of the property situated at Surat bearing Ward no. 2 city survey nondh no. 1446/A-1/A-2/A admeasuring 290.36 sq.mtrs. The petitioner no. 7 is the owner of the property situated at Surat bearing ward no. 2, City survey nondh no. 1446/A-1/A-1/B-1 admeasuring 466.84 sq.mtrs.

It is required to be noted that respondent no. 3 has issued notice dated 10.03.2003 bearing no. LAQ/CR/4/2000 under the provisions of the Land Acquisition Act, 1894 (hereinafter referred to as the said Act) stating that the property mentioned therein is acquired for the purpose of school. By the said notice, the petitioners are directed to receive compensation under Sec.12 (2) of the Act and to hand over the possession. It is further stated that the petitioners were informed to hand over the possession of the property in question by notice dated 10.03.2003, inspite of that petitioners have not handed over the possession of the property in question. Therefore, the petitioners were directed to vacate the premises in question on or before 18.03.2003, failing which the grievance, if any, voice by the petitioners will not be taken care of and the possession will be taken on 19.03.2003 at 10.00 hours.

The aforestated impugned notices have been challenged by filing this petition at the instance of the

present petitioners.

This court (Coram : N.G.Nandi & D.A.Mehta, JJ) vide order dated 20.03.2003 has passed the following order :

"1. It is stated by Mr.D.R.Dhimar, learned advocate for the petitioners that, Surat Municipal Corporation be permitted to be joined as Respondent no. 4 in this petition. Surat Municipal Corporation, Surat is permitted to be joined as Respondent no. 4 in this petition.

2. Heard. Rule returnable on 21.04.2003. Status-quo as regards possession of the land in question shall be maintained by the respondents till the next date. Direct service permitted."

It is contended by the learned counsel for the petitioners that before issuing the impugned notices, no procedure under Secs. 4,5(A),6,9 and 12 of the Act has been followed by the respondent-corporation. It is further contended that none of the petitioners were aware of any proceedings initiated under Sec. 4,5 and 6 of the Act. It is contended that the proceedings were initiated in the year 1991 and owners have raised the objection. After hearing, the Land Acquisition officer made a report to the State Government vide letter dated 04.06.1991 saying that it is not proper to acquire the land cited in the report. It is further submitted that the petitioners are not being given any opportunity of hearing and therefore there is no fair procedure is being followed. It is further submitted that the land in question was reserved for public purpose i.e. for the school and the development plan of 1986 but in the draft development plan, the same land is being released. It is also submitted that no procedure under Sec. 78 of the B.P.M.C.Act was followed.

In support of his arguments, learned advocate for the petitioners has relied on the decision reported in the case of Dharampal Singh and others V/s A.K.Banerji and others reported in AIR 1971 Patna 209. In para 11 the Apex Court has observed as under.:

"The notifications (Annexures 2 and 5) are also bad because they had been signed by the Additional Collector, who speaks about the existence of a public necessity as it appears to the Collector or on his satisfaction and not that it appeared to him or that he was satisfied that

the land was needed for a public purpose. Th identical defect was there in the notification which was the subject-matter of consideration in C.W.J.C.Nos.604 and 1174 of 1969 = (reported in AIR 1971 Pat 167). In such a situation the notification was held to be bad. Annexures 2 and 5 are bad in this case also on that ground."

Learned counsel for the petitioners has also relied upon the decision in the case of M/s Bokaro and Ramgur V/s Additional Collector, Hazaribagh and another reported in AIR 1971 Patna 167. In para 18 the Apex Court has observed as under.:

"The third ground of attack on the declaration, annexure 4, is well-founded and is sufficient for the quashing of the said declaration. In this particular case the notification under Section 4 seems to have been issued by the Additional Collector of Hazaribagh. He is the authority who heard and decided the objection filed by the petitioner-company. Within the meaning of clause (c) of Section 3 of the Act, as it stands under the Bihar Amendment, the Additional Collector is the Collector. It was, therefore, not open to him to say in the declaration that it appeared to the Deputy Commissioner of Hazaribagh that land was required to be taken by the Government at public expense for public purpose. There is nothing to indicate, as no materials have been placed on behalf of the State before us that the declaration in writing in fact was by the Deputy Commissioner the declaration was merely notified by the Additional Collector. On the other hand, on the facts and in the circumstances of this case, it seems reasonably clear that all steps were taken by the Additional Collector on his own, in exercise of his authority. It was his satisfaction which he purported to declare under Section 6 by the notification contained in Annexure 4 but while doing so instead of stating his own satisfaction, he referred to the satisfaction of the Deputy Commissioner. The notification containing the declaration under Section 6, therefore, in my opinion, is invalid on that account."

On behalf of respondent no. 4, the affidavit-in-reply has been filed by one Jivanlal M Patel, Director of Plan, Surat Municipal Corporation. It is contended by respondent no. 4 that the Standing

Committee of the Surat Municipal Corporation by its Resolution no. 1412 dated 28.11.1986 has resolved to acquire the disputed land for the public purpose i.e. for the purpose of school in exercise of the powers conferred u/s 78 of the Bombay Provincial Municipal Corporation Act (for short "BPMC Act"). It is further contended that once the acquisition has been made the same is deemed to have been acquired for the public purpose in view of the decision rendered by this Hon'ble Court in the case of Kanaiyalal, which is also confirmed by the Hon'ble Supreme Court. It is stated that the sanction development plan is of 1986 and the land has been shown under the reservation no. P.8 for the purpose of school. It is further contended that the land in question has been shown under the reservation for the school purpose in the revised development plan of 1996. In exercise of the powers under section 17(1)(A)(2) of the Gujarat Town Planning and Urban Development Act, the State Government has proposed to delete the reservation and the land has been proposed in the residential zone. Thereafter, vide notification dated 17.05.2001, the State Government invited the objections. The respondent no. 4-Corporation vide its resolution no. 262/2001 dated 10.07.2001 resolved to raise objections in respect of the proposed change. Accordingly, respondent no. 4-Corporation raised objections and submitted that notification under Sec. 4 and 6 of the Act have already been issued and that the present land is required for the public purpose and the land is already put under reservation, under the development plan. It is further contended that in view of the fact that the resolution under Sec.78 of the BPMC Act has been passed and the land has already been shown reserved under the development plan, it is deemed that the land is required for the public purpose.

In support of his arguments, learned counsel for respondent No.4 has relied upon the decision in case of Kanaiyalal Maneklal Chinai and others V/s State of Gujarat reported in VII G.L.R.717 wherein in head-note it is observed as under :

"The change that is made by the amendments in the Land Acquisition Act by the notification under Sec. 3(4) of the Commissioners Act is a substantial one and in effect the amendments provide for compulsory acquisition of land by the Commissioner and make the declaration of the Commissioner conclusive. The amendments are, therefore, post-constitutional law coming within Article 31(3). Consequently, in a case where

notification under Sec. 6 has been issued by the Commissioner declaring that the land is needed for a public purpose, the existence of a public purpose would be justiciable despite the conclusive character attached to the declaration under sec. 6(3). Having regard to the provision enacted in Article 31(2), sec. 6(3) would not stand in the way of an aggrieved party agitating before the Court that the acquisition is not for a public purpose and is, therefore, violative of Article 31(2). (para-17).

Learned counsel for respondent No.4 has also placed reliance on the decision in case of Kanaiyalal Maneklal Chinai and another V/s State of Gujarat reported in AIR 1970 S.C.1189, wherein it is observed in headnote "D" as under :

" Land Acquisition Act (1894), Section 4 `Public purpose' - Acquisition of land by State for setting up memorial of Mahatma Gandhi is one for `public purpose' - Notification not specifying that it was needed for municipality - It is not essential to satisfy extended meaning of `public purpose' in Section 78(1) Bombay Act of 1949."

Further, reliance is placed on the decision in case of Kikabhai Ukabhai Patel & Ors. V/s State of Gujarat reported in XXXI(2) G.L.R. page 1043, wherein in para 5, it is observed as under :

" After the land acquisition proceedings have been initiated, Government has liberty to withdraw from acquisition provided possession of the acquired land has not been taken. In the present case, possession of the land is still with the petitioners. Therefore, the first respondent can validly exercise its liberty to withdraw from acquisition of the concerned lands if it was so minded. In the present case, the acquisition proceedings were initiated at the behest of the third respondent which had proposed acquisition of the land for installation of its drainage disposal scheme. State Government was required to have proposal to that effect from the third respondent which was the acquiring body and it had to re-send fresh proposal under Sec. 78 of the BPMC Act. At that stage never reached, it cannot be said that the first respondent had taken a decision to withdraw from acquisition. The decision not to proceed with acquisition

which was conveyed by Yadi at Annexure `H' only meant that so far as the first respondent was concerned, it was not inclined to proceed further with acquisition and from 13-10-1988 the date of the Yadi, further acquisition proceedings remained suspended. But they could have been terminated validly if ultimately a decision was reached under Sec. 48(1) to withdraw from acquisition. Till that decision was reached, there was locus paenitentiae for the first respondent to resume its suspended proceedings."

Learned counsel for respondent No.4 has also placed reliance on the decision in case of Nasik Municipal Corporation V/s Harbanslal Laikwant Rajpal and others reported in AIR 1997 S.C.1701, wherein in para 5, it is observed as under :

"It is then contended by Mr.U.R.Lalit, that the respondents had not been given the information of the notification under Section 9 of the Land Acquisition Act. Therefore, the award is bad in law. We find no force in the contention. In the absence of notice or failure to serve notice, the award does not become invalid. Due to the fact that immediately after the award and before the publication of the award, the writ petition came to be filed on September 25, 1980, we direct the appellants to make an application within six weeks under Section 18(1) of the Land Acquisition Act seeking reference. The Land Acquisition Officer is directed to refer the matter to the competent Civil Court for disposal within two months according to law."

Learned counsel for respondent No.4 has also placed reliance on the decision in case of Bhagat Singh etc. V/s State of U.P. and others and other allied matters reported in AIR 1999 S.C.436, wherein in head-note "B" it is observed as under :

" There is no need that the land proposed to be acquired by the Government for a particular public purpose should be for the same purpose or use mentioned in the Master Plan or Zonal Plan for the said area. Nor will the acquisition be invalid merely because the land proposed to be acquired is for a purpose other than the one permitted by the Master Plan or Zonal Plan applicable to that locality. Acquisition will be valid if it is for a public purpose even if it is

not for the type of user permitted by the Master Plan or Zonal Plan in force at the time the acquisition is made. It will be for the beneficiary of the acquisition to move the competent authority under the Development Act and obtain the sanction of the said authority for suitable modification of the Master Plan so as to permit the use of the land for the public purpose for which the land is acquired. In fact, it may be difficult for the beneficiary of the acquisition to move the competent authority under the Development Act seeking permission to change of land use even before the land is acquired or before possession is given to the beneficiary. Acquisition for a public purpose and obtaining permission from competent authority under the concerned Development Act for change of land use are different from one another and the former is not dependant upon the latter."

Learned counsel for respondent No.4 has also placed reliance on the decision in the case of Chameli Singh V/s State of U.P. reported in (1995) 9 (JT) SC 380 wherein it is observed as under.:

".... In every acquisition by its very compulsory nature for public purpose, the owner may be deprived of the land, the means of his livelihood. The State exercises its power of eminent domain for public purpose and acquires the land. So long as the exercise of the power is for public purpose, the individual's right of an owner must yield place to the larger public purpose." It is also held that... "for compulsory nature of acquisition payment of solatium is provided to the owner and therefore there is no case of deprivation of right to livelihood under Article 21 of the Constitution."

Considering the rival contentions and in the facts and circumstances of the case, it appears that the procedure under Sec. 78 of the B.P.M.C.Act has been followed, meaning thereby the Corporation by its resolution no. 1412 dated 28.11.1986 has resolved to acquire the disputed land for public purpose i.e. for the school. The said resolution was accorded by the State Government vide letter dated 10.09.1987. Even in the sanctioned development plan, the said land has been shown under reservation for the purpose of school.

It is required to be noted that Parbhubhai

Jagabhai, who is the father of petitioner nos. 1,2 & 3 died on 08.05.1988. The property in question thereafter inherited by the petitioner nos. 1,2 & 3. Admittedly, the impugned notices dated 10.03.2003 have been issued against the dead person. Similarly, Jivanbhai Bhikhabhai had died on 14.02.1993 and thereafter the property in question was inherited by petitioner nos. 4 & 5. Here also the notices have been issued against the dead person. Considering this aspect, we are of the opinion that the impugned notices dated 10.03.2003 have been issued against the dead persons and therefore any proceedings initiated against the dead persons is a nullity and the same is required to be quashed and set aside. Accordingly, the impugned notices dated 10.03.2003 at Annexure `F' are quashed and set aside and the matter is remanded to the Land Acquisition Officer. The concerned Land Acquisition Officer is directed to initiate the proceedings from the stage of issuing the notice dated 10.03.2003. It is needless to say that the Land Acquisition Officer shall initiate the proceedings from the stage of issuing the notices in accordance with law.

Rule made absolute to the aforesaid extent with no order as to costs.

(D.K.TRIVEDI, J)

(SHARAD D DAVE, J)

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